FOR ARGUMENT

(19)

No. 90-1912

In The
Supreme Court of the United States
October Term, 1991

Stephanie Nordlinger,
Petitioner,
v.

Kenneth Hahn, in his capacity as Assessor for Los Angeles County, and the County of Los Angeles,
Respondents.

On Writ of Certiorari to the Court of Appeal of the State of California

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BRIEF OF RESPONDENTS

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QUESTIONS PRESENTED

1. Whether California's tax on the acquisition value of property violates the Equal Protection Clause.

2. Whether, if petitioner has standing to assert such a claim, the California tax on the acquisition value of property infringes the constitutionally protected right of interstate travel.

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STATEMENT OF THE CASE

1. *Background.* Prior to 1978, California's state and local taxes were among the highest in the nation.[1] Because real property was taxed based upon market value, sustained growth in the California real estate market

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[1] Oakland, *Proposition 13—Genesis and Consequences*, 32 Nat'l Tax J. 387, 388-89, 390 (Supp. June 1979) (in 1975-1976, state and local taxes consumed 14.9 percent of Californians' personal income, placing the State's per capita tax burden 19 percent above the national average).

during the 1960s and 1970s fueled a sharp rise in property taxes. From fiscal year 1967-1968 through 1971-1972, property tax revenues increased, on average, 11.5 percent annually; about half of this increase was caused by the rise in the assessed value of property. Report of the California Senate Comm'n on Property Tax Equity and Revenue 23 (June 1991) ("Senate Report"). Moreover, because the prices of single-family homes were growing even faster than other properties, homeowners were shouldering an increasing share of the growing property tax burden. Oakland, *supra* note 1, at 389.

The California legislature responded by enacting a series of measures aimed at relieving this burden. In 1968, the State adopted a homeowner tax exemption for the first $3000 of market value; the exemption later was increased to $7000. Senate Report, *supra*, at 23. In 1972, the State capped local property tax rates and, in separate measures, extended relief to low-income senior citizens and to renters. *Id.* In all, during the 10 years preceding enactment of Proposition 13, the legislature passed 19 property tax relief measures. DeCanio, *Proposition 13 and the Failure of Economic Politics*, 32 Nat'l Tax J. 55, 55 (Supp. June 1979). Despite these efforts, the property tax burden continued to grow as real estate prices skyrocketed. Statewide, the median price for an existing home doubled from 1973 to 1977, far outpacing general inflation. Senate Report, *supra*, at 23 (median price rose from $31,530 in 1973 to $62,430 in 1977); Oakland, *supra* note 1, at 390. As a result, "a large number of homeowners found themselves with property tax bills which were doubling and even tripling without a corresponding increase in their income flow."[2] These huge

[2] Oakland, *supra* note 1, at 392; *see also* Senate Report, *supra*, at 25 (noting that some "homeowners . . . received tax bills double or even triple the previous year's"). At the same time, the "virtual explosion of tax revenues" was creating enormous budget surpluses. Oakland, *supra* note 1, at 393. In the two-year period preceding the

increases in the assessed market value of real property literally taxed some people out of their homes. See Oates, *Capitalization Session: Discussion*, 32 Nat'l Tax J. 111, 111 (Supp. June 1979).

Of course, these burdens fell most heavily on individuals with fixed incomes, many of whom were elderly. Aside from losing their homes, the fear of that prospect naturally caused substantial emotional harm, and the money used to pay taxes to keep a roof over their heads necessarily was diverted from necessities such as food, clothing, and health care. In short, the increasing taxes based on market value assessments posed serious threats to the health and welfare of residents of California.

2. *Proposition 13.* In response to these economic and social circumstances, and to the failure of piecemeal tax relief efforts, California voters in June 1978 overwhelmingly approved a statewide ballot initiative known as Proposition 13, which dramatically restructured the State's system of property taxation. Proposition 13 amended the California Constitution to add Article XIIIA which placed a cap on property tax rates and generally required property to be assessed according to its value at acquisition rather than its current market value. See Cal. Const. art. XIIIA, §§ 1(a), (2)(a) (Deering 1981 & Supp. 1992).

Article XIIIA of the California Constitution consists of four essential and interrelated elements. First, Section 1 caps real property taxes at one percent of property "value"—a cut in the tax rate of more than 50 percent.[3] Second, Section 2(a) defines the "value" of property, for purposes of taxation, as the 1975 assessed value or, for properties acquired after that date, as "the appraised

enactment of Proposition 13, the State's revenues swelled by 40 percent—without any increase in tax rates. *Id.* It was projected that the State's budget surplus would top $10 billion the following year. *Id.* at 392.

[3] Senate Report, *supra*, at 31; Oakland, *supra*, note 1, at 387.

value of the property when purchased [or] newly constructed."[4] Third, Section 2(b) allows the assessed acquisition value of property to be adjusted upward for inflation, but by no more than two percent annually.[5] Finally, Sections 3 and 4 prohibit the state and local governments from enacting new ad valorem property taxes and impose a super-majority vote requirement on increases in certain other state and local taxes.[6] As the California Supreme Court has recognized, each of these four essential elements is "interrelated and interdependent, forming an interlocking 'package' . . . to assure effective real property tax relief." *Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization*, 583 P.2d 1281, 1290 (Cal. 1978). Petitioner's argument in this Court challenges only the "acquisition value" provisions of Section 2, which are at the heart of Article XIIIA. See Pet. Br. 2 n.1.

Article XIIIA worked a fundamental change in California's property tax system, shifting the valuation of property subject to taxation from a "current value" basis to an "acquisition value" basis. This restructuring was a response to the unique economic and public welfare conditions prevailing in California and was tailored to provide relief to those taxpayers who were suffering most under

[4] Article XIIIA has been amended to exempt from reassessment certain types of new construction, *see* Cal. Const. art. XIIIA, §§ 2(a), 2(c) (Deering 1981 & Supp. 1992), and certain transfers of property between members of an immediate family, *see id.*, §§ 2(g), 2(h). In addition, the law permits citizens over age 55 to carry their existing assessments with them when they sell their homes and relocate to replacement quarters of equal or lesser value. *See id.*, § 2(a).

[5] The same section has been amended to permit assessments to be lowered if property values fall below assessed value, although the likelihood of this happening is low for properties that have not recently changed hands.

[6] Section 6 provides for severability of the various provisions of Article XIIIA.

the State's market value tax system.[7] Most important, Article XIIIA eliminated the prospect of homeowners being taxed into financial distress and even forced out of their homes because of uncontrollable and unpredictable swings in the California real estate market. Under Article XIIIA, prospective purchasers of property could calculate their tax obligations at the time of purchase with the assurance that their tax bills would not increase by more than two percent each year.

3. *Amador Valley.* Shortly after Article XIIIA was enacted in 1978, a group of California taxpayers and governmental agencies brought suit challenging Article XIIIA's constitutionality under six separate provisions of the federal and state constitutions. In particular, the taxpayers—like petitioner here—argued that Article XIIIA violated the Equal Protection Clause of the Fourteenth Amendment and the right to travel. The California Supreme Court rejected the taxpayers' claims in *Amador Valley Joint Union High School District* v. *State Board of Equalization*, 583 P.2d 1281 (Cal. 1978).

With respect to the equal protection challenge, the *Amador Valley* court began by acknowledging that, under the acquisition value provisions of Article XIIIA, "two substantially identical homes, located 'side-by-side' and receiving identical governmental services, could be assessed and taxed at different levels depending upon their date of acquisition." *Id.* at 1292. The court went on, however, to observe that the existence of such disparities does not contravene the Equal Protection Clause so long as the State's method of taxation is rationally related to a legitimate governmental objective. See *id.* at 1292-93.

According to the California Supreme Court, Article XIIIA embodied an alternative, and fundamentally dif-

[7] As one commentator noted, "Proposition 13 emerges as a unique California phenomenon. The combination of factors which gave it birth are unlikely to be matched in any other State." Oakland, *supra* note 1, at 405.

ferent, philosophy of taxation from that of the pre-existing current value system. Abandoning a policy that tied property taxes to the prevailing values in California's volatile real estate market, Article XIIIA embraced a new tax policy under which "henceforth all real property w[ould] be assessed and taxed at its value *at date of acquisition*." *Id.* at 1293 (emphasis in original). The court found that

> [t]his "acquisition value" approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should *bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value.* Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach [by largely eliminating taxation on unrealized gains in value].

Id. (emphasis added). "Seen in this light," Article XIIIA "does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased property in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase." *Id.* The court concluded that there was no constitutional impediment to the adoption of such an acquisition value system because the Equal Protection Clause "do[es] not purport to confine the states to a current value system" of property taxation. *Id*.

The *Amador Valley* court also rejected the taxpayers' claim that Article XIIIA violated the constitutional right to travel. The court found that "[t]he change from a current value system to an acquisition value method is intended to benefit *all* property owners, past and future, resident and nonresident, by reducing inflationary increases in assessments, by limiting tax rates, and by permitting the taxpayer to make more careful and accurate

predictions of future tax liability." *Id.* at 1295 (emphasis in original). Article XIIIA, the court reasoned, was therefore more likely to serve as an inducement than as a barrier to prospective migrants from other states. *Id.*

4. *Proceedings in this Case.* Stephanie Nordlinger is a California resident who purchased her first home in the Baldwin Hills area of Los Angeles County on November 1, 1988. Pet. App. A4. Petitioner paid $170,000 for the property—$48,500 more than the sellers had paid for the same house just two years earlier and five times as much as some of her neighbors paid for their homes roughly a dozen years before. J.A. 6, 9-10. Within a year of her purchase, petitioner brought suit against respondents, Los Angeles County and its assessor, in the Superior Court of Los Angeles County, alleging that she had been overtaxed on her property in violation of the United States Constitution. In her first amended complaint, filed October 25, 1989, she sought a declaration that the acquisition value tax was unconstitutional and, in a separate count, a refund of $896 for property taxes paid during the 1988-1989 tax year. *Id.* at 12-13.

Respondents demurred to petitioner's complaint on the grounds that the constitutionality of the tax had been settled by the California Supreme Court in *Amador Valley* and that her claim for declaratory relief was, in any event, time-barred.[8] Petitioner objected to the respond-

[8] J.A. 14-15. Petitioner sought declaratory relief pursuant to section 4808 of the California Revenue and Taxation Code, which grants a cause of action to taxpayers who allege that a change of law has rendered local assessment or collection of taxes illegal or unconstitutional. Section 4808 requires, however, that the taxpayer bring her action within 12 months of the controlling change in law. *See* Pet. App. A5 n.3. In this case, petitioner contended that the relevant "change . . . in law" was this Court's decision in *Allegheny Pittsburgh Coal Co.* v. *County Commission*, 488 U.S. 336 (1989), which preceded petitioner's complaint by nine months; the trial court, however, found that the first count of petitioner's complaint (based upon section 4808) was time-barred because it was filed 11 years after Article XIIIA changed the tax law of California. *See* Pet. App. D2.

ent's demurrer and sought leave to "amend her complaint to include allegations based on further updated and extensive studies of property tax inequities in Los Angeles County." Pet. App. A7. The trial court held that the decision in *Amador Valley* was controlling and sustained the demurrer without leave to amend. *Id.* at D1-D2.

On review, the California Court of Appeal affirmed the trial court's judgment. *Id.* at A1-A27. The trial court's denial of petitioner's motion to amend her complaint meant that the studies she had prepared and tendered in support of her amended complaint were not part of the record in this case. Nevertheless, the court of appeal took judicial notice of the fact that the acquisition value tax "has resulted in gross disparities in the assessments of properties with similar current market values." *Id.* at A12. According to the court of appeal, however, the existence of such disparities did not justify reconsidering *Amador Valley* because "[t]hat decision [had] plainly anticipated" that property tax assessments under an acquisition value system would result in discrepancies when measured against current market value. *Id.* at A16.

The court of appeal also held that this Court's decision in *Allegheny Pittsburgh Coal Co.* v. *County Commission*, 488 U.S. 336 (1989), which struck down a county assessor's arbitrary assessment practices as a violation of the Equal Protection Clause, did not call into question the California Supreme Court's earlier judgment in *Amador Valley*. Pet. App. A20-A21. The court reasoned that *Allegheny Pittsburgh* stands only for the common-sense proposition that it is irrational *in a tax system founded upon current market value* to assess like-valued properties differently depending upon their date of acquisition. *Id.* "Because California law provides for an acquisition value assessment method," the court reasoned, "Nordlinger's reliance on *Allegheny*'s striking down of an arbitarily enforced current market value method is misplaced." *Id.* at A21.

The court of appeal also rejected petitioner's claim that California's acquisition value tax violated the right to travel. *Id.* at A23-A25. The court held that petitioner's reliance upon cases invalidating laws apportioning state benefits according to length of residency "overlook[ed] the crucial fact that article XIIIA's acquisition value assessment scheme applies equally to nonresident owners." *Id.* at A25 (emphasis omitted). Because Article XIIIA "bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state," the court concluded, Article XIIIA does not infringe the right of interstate migration. *Id.*

Thus, the court of appeal affirmed the trial court's judgment in all respects. On February 28, 1991, the California Supreme Court denied petitioner's petition for discretionary review. *Id.* at B1.

SUMMARY OF ARGUMENT

I. California has exercised its "very wide discretion in the laying of [its] taxes," *Allied Stores, Inc.* v. *Bowers*, 358 U.S. 522, 526 (1959), by choosing to replace its tax on the current market value of property with a tax based on the acquisition value of property. Applying equal protection principles that have "weathered nearly a century of Supreme Court adjudication," *Kahn* v. *Shevin*, 416 U.S. 351, 355-56 (1974), California's sovereign choice to adopt this method of taxation must be upheld so long as it "bear[s] some rational relationship to legitimate state purposes." *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 40 (1973). Under this standard, the California tax plainly is constitutional.

The courts of California have identified three separate purposes underlying the State's choice of an acquisition value method of taxation, each of which is legitimate and rationally served by the California tax, and each of which independently provides a sufficient basis to uphold the

tax. First, an acquisition value tax avoids taxing unrealized appreciation in the value of property, thereby eliminating the prospect of homeowners being taxed out of their homes or into a state of poverty because of dramatic increases in property values. See *infra* pp. 17-21. Second, an acquisition value tax provides taxpayers with the ability to calculate their future tax liability with virtual certainty based on what they were willing to pay for their property—rather than having their future tax liability based upon a "market value" that reflects third-party transactions over which they have no control. See *infra* pp. 21-24. Third, an acquisition value tax assures local governments of a stable source of revenue that is less affected by movements—particularly downward movements—in property values than a current market value tax. See *infra* pp. 24-29.

Petitioner's arguments (Pet. Br. 30-39) that the California acquisition value tax is not a rational means to achieve the State's objectives lack merit. Petitioner either mischaracterizes the State's legitimate purpose (see Pet. Br. 32) or rests her argument on the irrelevant assumption that a current market value tax is more "fair" or "equitable" (see Pet. Br. 34, 36) than an acquisition value tax. Given this premise, petitioner then argues that there are ways to achieve the purposes underlying California's tax while retaining current market value assessments. See, *e.g.*, Pet. Br. 35. Such arguments "misapprehend the nature of rational-basis scrutiny, which is the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause." *City of Dallas* v. *Stanglin*, 490 U.S. 19, 26 (1989). The method of taxation chosen by California need not be the best choice—indeed, it need not even be a wise choice—but our federal system leaves such choices to the political processes of the States, as long as there is some rational basis for the decision. *Rodriguez*, 411 U.S. at 40. The invitation by petitioner and her *amici* to second-guess the wisdom of California's acquisition value property tax system should be addressed to the political branches, and not to the judiciary.

II. Petitioner places substantial reliance on her argument that this Court's decision in *Allegheny Pittsburgh Coal Co.* v. *County Commission*, 488 U.S. 336 (1989), requires the invalidation of the California tax. But in *Allegheny Pittsburgh*, the State of West Virginia had chosen as a matter of state policy to tax property on the basis of its current market value. Because the "aberrational assessment policy" of the Webster County tax assessor was not a rational means to achieve West Virginia's objective of assessing property at current market value, the Court found that the resulting disparities in assessments violated the Equal Protection Clause.

Allegheny Pittsburgh neither requires States to tax on the basis of the current market value of property nor suggests that an acquisition value system of property taxation would be irrational. Because the State of West Virginia—unlike California—had not adopted an acquisition value tax system, *Allegheny Pittsburgh* says nothing about the legitimacy of a State's choice of such a tax system. To the contrary, this Court has long held that under the Equal Protection Clause, a "State is not limited to *ad valorem* taxation." *Ohio Oil Co.* v. *Conway*, 281 U.S. 146, 159 (1930). Moreover, this Court consistently has upheld against equal protection challenges state taxes that were not based on the current market value of property. See *Bell's Gap R.R.* v. *Pennsylvania*, 134 U.S. 232 (1890); *Ohio Oil Co.*, 281 U.S. at 161. The decision in *Allegheny Pittsburgh* is entirely consistent with this line of cases.

III. Finally, in an effort to escape the highly deferential standard of review applicable to state taxing schemes, petitioner argues that the California acquisition value tax violates the constitutional right of interstate travel. However, petitioner lacks standing to bring this claim; she can point to no record evidence supporting a claim that *her* right of interstate travel has been in any way impaired. See *Barrows* v. *Jackson*, 346 U.S. 249, 255

(1953); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 166 (1972).

Even if the Court were to reach this issue, it is plain that California's tax does not draw explicit residency distinctions of the sort that have characterized those state laws found to have burdened the right to travel. The tax is not a law that expressly "den[ies] newcomers 'basic necessities of life'" or citizenship. See *Memorial Hosp.* v. *Maricopa County*, 415 U.S. 250, 269 (1974) (denial of state-sponsored health care); see also *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) (basic welfare benefits); *Dunn* v. *Blumstein*, 405 U.S. 330 (1972) (right to vote). Nor is it a law that "creates permanent distinctions among residents based on the length or timing of their residence" within the State. See *Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 907 (1986) (plurality opinion) (striking down law that tied veterans' benefits to length of residency); *Hooper* v. *Bernalillo County Assessor*, 472 U.S. 612 (1985) (same); *Zobel* v. *Williams*, 457 U.S. 55 (1982) (striking down law that provided payments to residents depending upon length of residency).

In sum, all of the state laws that have been struck down as constitutionally invalid because of their impact on the right of interstate travel "create[d] 'fixed, permanent distinctions between . . . classes of concededly bona fide residents' based on when they arrived in the State." *Hooper*, 472 U.S. at 617 (quoting *Zobel*, 457 U.S. at 59); see also *Soto-Lopez*, 476 U.S. at 908-09 (plurality opinion). Under the California tax, by contrast, all property is taxed according to its value at acquisition, regardless of whether the taxpayer is a California resident or nonresident, and regardless of whether she has moved to the State recently or lived there her entire life. California's acquisition value tax is not subject to heightened scrutiny as a law impairing the right of interstate travel.

ARGUMENT

I. CALIFORNIA'S TAX ON THE ACQUISITION VALUE OF PROPERTY DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Under challenge in this case is California's sovereign choice to adopt a system that imposes a property tax based upon the acquisition value of property. The standards under which the validity of this choice should be reviewed by this Court are well established. Under principles of equal protection that have "weathered nearly a century of Supreme Court adjudication," *Kahn* v. *Shevin*, 416 U.S. 351, 355-56 (1974), the choice by government of taxing methodology is entitled to substantial deference by the federal courts and must be upheld so long as "any state of facts reasonably can be conceived that would sustain it." *Allied Stores, Inc.* v. *Bowers*, 358 U.S. 522, 528 (1959).

A. Under Principles Of Federalism Inherent In The Constitution, The States Are Accorded Wide Discretion In Fashioning Methods of Taxation.

The power to tax is a sovereign power, reserved to the States by the Tenth Amendment to the Constitution of the United States. Consistent with the balance of governmental power between federal and local interests embodied in the constitutional text, this Court "ha[s] declined to undertake the essentially legislative task of establishing a 'single constitutionally mandated method of taxation.'" *Goldberg* v. *Sweet*, 488 U.S. 252, 261 (1989) (quoting *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U.S. 159, 171 (1983)). Instead, the States have been free to exercise their "very wide discretion in the laying of their taxes," *Allied Stores*, 358 U.S. at 526, by adopting a host of methods of taxation.

It is undisputed that, in reviewing state taxing schemes, this Court does not "sit as a superlegislature to judge

the wisdom or desirability of legislative policy determinations." *City of New Orleans* v. *Dukes*, 427 U.S. 297, 303 (1976) (per curiam). As long as no fundamental right or suspect class is impaired by California's choice of tax methodology—and that clearly is the case here (see *infra* pp. 41-47)—California's property tax system should be upheld if the State's purpose is legitimate and the means employed by the State "bear some rational relationship" to its purpose. *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 40 (1973). Indeed, in the area of tax policy, "even more than in other fields," state policy choices are accorded the strongest presumption of constitutionality. *Madden* v. *Kentucky*, 309 U.S. 83, 88 (1940). "The burden is on the one attacking the legislative arrangement to negative *every conceivable basis* which might support it." *Id.* (emphasis added); accord *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

Petitioner would have this Court work a revolution in the judicial review of taxation. Time and again her argument comes back to its underlying theory—that current market value provides the only legitimate basis for taxation because only a "market value" system ensures that (1) wealthier taxpayers pay more (see, *e.g.*, Pet. Br. 33); and (2) the amount of tax is related to the governmental benefits received (see, *e.g.*, *id.* at 38). In fact, however, it is not clear that these assumptions are correct. See *infra* pp. 19-20 (discussing taxpayers' "ability to pay"). More important, petitioner's theory, if accepted, would jeopardize the constitutionality of every provision in the federal and state tax codes that furthers any policy other than those she favors.[9] Indeed, accept-

[9] For example, accepting her position would cast doubt on taxing capital gains at lower rates than earned income because that change in the tax code, "[r]ather than being based on ability to pay, by its design . . . systematically *ignores* that critical factor." Pet. Br. 33. Similarly, accepting her position would raise questions about such commonplace tax practices as allowing deductions for home mortgage

ance of petitioner's theory, and its underlying assumptions, would alter fundamentally the existing role of tax systems in both federal and state government.[10] Such a restriction on the power to tax would be flatly inconsistent with long-standing equal protection principles, and must be rejected.

B. California's Tax On The Acquisition Value Of Property Plainly Satisfies Rational Basis Scrutiny Under The Equal Protection Clause.

At the outset, it is well established for purposes of constitutional analysis that this Court will accord " 'respectful consideration and great weight to the views of the state's highest court' " concerning the state interests underlying a challenged provision of state law. *California*

interest but not for rent, the nontaxation of accrued interest on insurance policies and annuities, local tax abatements for new businesses, and many more.

[10] This Court has long held that the amount of general revenue taxes collected need not be related to the value of the governmental services provided. *See Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 622 (1981).

> "A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good."

Id. at 622-23 (quoting *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 521-23 (1937) (citations and footnote omitted)); *see also Pennell* v. *City of San Jose*, 485 U.S. 1, 23 (1988) (Scalia, J., concurring in part and dissenting in part) ("because of the operation of the Takings Clause our governmental system has required [subsidies for various groups] to be applied, in general, through the process of taxing and spending, where both economic effects and competing priorities are more evident").

Retail Liquor Dealers Ass'n v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 111 (1980) (citation omitted); see also *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981). The California Supreme Court has set forth two of the purposes underlying the California acquisition value tax system—avoiding taxation on unrealized appreciation and providing property owners with predictable future tax liability based on the price the owner was willing to pay for the property. *Amador Valley Joint Union High Sch. Dist.* v. *State. Bd. of Equalization*, 583 P.2d 1281, 1283 (Cal. 1978). The California Court of Appeal in *R.H. Macy & Co.* v. *Contra Costa County*, 276 Cal. Rptr. 530, 535 n.2 (Cal. Ct. App. 1990), *cert. granted*, 111 S. Ct. 2256, *cert. dismissed*, 111 S. Ct. 2923 (1991), articulated a third rationale: an acquisition value tax assures a stable source of local government revenue that is less vulnerable than a market value tax to short-term deflation in local real estate prices. All of these legitimate state interests may reasonably be considered part of the "purpose and policy" underlying California's adoption of an acquisition value tax scheme, *Allied Stores*, 358 U.S. at 529, and each independently provides ample basis for upholding the tax system against an equal protection challenge.

The portion of petitioner's brief (Pet. Br. 30-37) devoted to attacking the nexus between the legitimate state purposes underlying the California tax and the actual operation of the law is fundamentally flawed. Either petitioner mischaracterizes the undisputed purposes–of the tax in order to knock down a straw-man argument (*id.* at 32, 37; see *infra* pp. 18-19, 25), or petitioner concedes the validity of the purpose articulated but argues that an acquisition value tax is not the *best* means to achieve the State's goals (Pet. Br. 34-35; see *infra* pp. 20-21). Indeed, the briefs of petitioner and her *amici* often do little more than assert that California's choice of such a tax was unwise. See, *e.g.*, Pet. Br. 12-13; Br. *Amicus Curiae* of League of Women Voters 7-10; Br. *Amicus Curiae* of Int'l Ass'n of Assessing Officers 18-19; Br. *Amicus Curiae* of the Amer. Planning Ass'n 11-18.[11]

1. *An Acquisition Value Tax Protects Property Owners From Being Taxed On Unrealized Appreciation In Property Values.*

One purpose underlying California's acquisition value tax is to protect property owners from being taxed on unrealized appreciation in the value of their property—*i.e.*, to avoid the situation in which homeowners may be taxed out of their homes, or to prevent, what is equally disturbing, residents on fixed incomes from diverting so much of their resources to housing that they are unable to purchase adequate food, clothing, and health care to ensure their continued welfare. As the California Supreme Court stated in *Amador Valley*, an acquisition value tax avoids taxing "an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales [the owner] can exercise no control." 583 P.2d at 1293. This Court in *Allegheny Pittsburgh* likewise recognized that California's acquisition value tax "is grounded on the belief that taxes . . . should not tax unrealized paper gains in the value of the property." 488 U.S. at 345 n.4.

The history of property taxation in California in the 1970s readily illustrates how a current market value tax system can result in dramatic increases in property taxes in a time of rapid inflation in real property values. Although longtime owners of property share in the increases in value, property taxes cannot be paid out of these unrealized paper increases. Indeed, petitioner concedes that current market value assessments "place[d] a strain on

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[11] For example, the *Amicus* Brief of the League of Women Voters suggests that the revenues raised by such a system are inadequate to the needs of the State and that its "infrastructure is deteriorating and becoming more inadequate with the passage of every day." *Id.* at 8. Even if the assertion were true, it cannot be that a court could invalidate a tax law on this basis.

some homeowners when rapid property appreciation outstripped inflation, causing taxes to outpace income." Pet. Br. 34.[12]

The shift from a current market value tax to an acquisition value tax is a rational response to this phenomenon. Under California's acquisition value tax, property is assessed at its value at acquisition (subject to a two-percent annual adjustment for inflation), no matter what increase in market value may follow.[13] Reassessments to current market value are limited to circumstances where the property changes hands or is substantially improved; the new owner then receives the benefit of the same limits on increases in assessed value into the future.

Petitioner generally concedes that it is legitimate for a State to seek to protect its citizens from losing their homes when inflation outpaces income. This concession is necessary given this Court's deference in determining the legitimacy of state purposes in economic legislation. See *Allied Stores*, 358 U.S. at 528-29. Nonetheless, petitioner

[12] For obvious reasons, a current market value system places inordinate financial strain on persons with fixed incomes. As one commentator has explained, the hardships caused by a tax based on the current market value of property "will be felt most acutely by residents in changing neighborhoods or communities that experience rapid rises in property values. If gentrification occurs and 'yuppies' move in, the elderly, racial minorities, and fixed-income persons can be displaced, partly because longer term residents cannot afford dramatic increases in property taxes." Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 299 (1990).

[13] A similar purpose underlies the provisions for taxation of capital gains under the federal income tax laws. The Internal Revenue Code does not tax unrealized gain in the value of a capital asset because of the administrative difficulties of annual valuations and the burden on holders of properties without the resources available to pay the tax, who might be forced to liquidate the asset. 1 B. Bittker & L. Lokken, *Federal Taxation of Income, Estates & Gifts* ¶ 3.5.2 (2d ed. 1989); J. Pechman, *Federal Tax Policy* 109 (4th ed. 1983).

argues that the acquisition value tax scheme is an impermissible response because an acquisition value system does not "more closely approximate a taxpayer's ability to pay than . . . a current market value system." Pet. Br. 32. Common sense refutes petitioner's assertion: while both an acquisition value tax and a market value tax may result in some property owners paying *less* than they can afford, an acquisition value tax is much less likely than a current market value tax to require persons to pay *more* than they can afford because it does not tax unrealized appreciation in property values.[14]

In other words, petitioner's analysis of "ability to pay" distorts the State's true purpose by shifting the focus to petitioner's concern that her neighbors may be "*underpaying*" taxes (when measured on a market value basis). That argument neglects the true problem of "overpayment" on unrealized appreciation that California's tax was designed to correct: the situation where skyrocketing real estate prices were driving property taxes beyond some taxpayers' ability to pay. See *supra* pp. 2-3. By divorcing the "value" on which the tax is based from the unpredictable effects of real estate inflation, see *Amador Valley*, 583 P.2d at 1293—*i.e.*, by linking the size of a property tax bill to the taxpayer's demonstrated willingness and ability to pay for the property (acquisition

[14] For example, as between petitioner, who paid $170,000 for her house in 1988, and a neighbor, who paid something less than $35,000 for a similar house in the early 1970s (*see* J.A. 5, 9, 19), it is reasonable to assume that it is *more* likely that petitioner can afford a higher tax than her neighbor.

Under either a market value or acquisition value system, some property owners, either through inattention or unforeseen personal circumstances, might overestimate at the time of their purchase their future ability to pay the tax. But an acquisition value tax lessens this risk by removing the need to predict future changes in the uncertain real estate market. Given California's extraordinary experience in the mid-1970s, it is entirely reasonable for the State to prefer a policy under which fewer taxpayers are taxed beyond their means.

value)—the acquisition value tax rationally responded to the problems associated with taxation on unrealized appreciation.

In the alternative, petitioner concedes that "the ability-to-pay problems of fixed income taxpayers" are a legitimate state concern (Pet. Br. 34), but argues that California could have achieved its purpose without departing from a market value tax system—*e.g.*, by expanding tax forgiveness programs for persons on fixed incomes or by lowering the overall tax rate. *Id.* at 34-35. In fact, the State had tried various tax relief programs in connection with its then-existing current market value tax (see *supra* p. 2) and, through its voters, determined as a matter of policy to replace them with an acquisition value tax system. The fact that *other* "property tax limitation alternatives that provide relief . . . also are readily available," Pet. Br. 35, which in fact they are not,[15] does not mean that the alternative chosen is irrational. See *Kahn* v. *Shevin*, 416 U.S. 351, 356 n. 10 (1974).[16]

[15] Petitioner's tax relief proposal is at best only a partial solution to the problems posed by the taxing scheme that existed in California before 1978. It may be that a person facing actual eviction for failing to pay taxes will seek tax relief. But many elderly and fixed-income residents would certainly make significant personal sacrifies before accepting such relief. If these individuals fail to eat properly or to clothe themselves adequately or to maintain their health because they believe they should pay taxes, if at all possible, then individual tax-relief alternatives suggested by petitioner are completely inadequate to promote the public welfare. Given the importance of the State's purpose in protecting the health and welfare of a class of residents, petitioner's argument, which completely ignores these social concerns, is unpersuasive.

[16] Petitioner's *amicus* the International Association of Assessing Officers offers an alternative argument regarding this state purpose. Although conceding that a "pure 'acquisition value' system . . . might have some theoretical underpinnings," the *amicus* asserts that those legitimate interests would support only a "pure" acquisition value system, and California's tax is insufficiently "pure" because, for example, it "denie[s] 'acquisition value' assessment's benefits . . . to those California property owners who had acquired their property before the 1975-76 tax year." Br. *Amicus Curiae* of Int'l Ass'n of Assessing Officers 15-16. However, the fact that the State's intent "was never to establish pure 'acquisition value' assessing" (*id.* at 17) is irrelevant to the constitutional inquiry; the question is whether California's property tax—as it exists—is rational. The existence of exemptions from reassessment for certain intrafamily transfers and for persons over age 55, *see supra* p. 4 n.4, likewise does not render the tax irrational since these exemptions are supported by their own independent rationales. *See McGowan* v. *Maryland*, 366 U.S. 420, 426-27 (1961).

Petitioner's reliance on "available" alternatives (Pet. Br. 35) simply "misapprehend[s] the nature of rational-basis scrutiny." *City of Dallas* v. *Stanglin*, 490 U.S. 19, 26 (1989). Even if alternatives exist that might better achieve the legislative purpose or that might do so more "precisely" (Pet. Br. 35)—a suggestion which respondents dispute—the existence of alternatives simply is extraneous to rational basis analysis. *Kahn*, 416 U.S. at 356 n.10; see *Plyler* v. *Doe*, 457 U.S. 202, 216-17 (1982) (heightened scrutiny). California's acquistion value tax plainly has a rational relationship to its legitimate purpose of avoiding taxation on unrealized appreciation in property values. No more is required.

2. *An Acquisition Value Tax Provides Property Owners With Certain Future Tax Liability Based On The Purchase Price Of The Property.*

The California Supreme Court in *Amador Valley* identified another legitimate purpose of an acquisition value tax system: it "enable[s] each property owner to estimate with some assurance his future tax liability." 583 P.2d at 1293. By adopting an acquisition value tax, California has made property taxes another fixed element of the purchase price of property. As a result, a prospective property owner readily can estimate the maximum future property taxes to which the property will be subject, thereby permitting a more informed decision on his or her ability to afford the property in question.[17]

[17] Insuring predictability and certainty improves the efficient operation of the real property market. In this respect, an acquisi-

Petitioner begins by asserting that certainty "in and of itself" (Pet. Br. 36) is not a sufficient state purpose to support the tax in question because certainty alone "does not make a tax system either rational or fair." *Id.* at 36. That argument, however, is neither logically nor legally compelling: the fact that *some* tax systems might achieve "certainty" through irrational means simply begs the question whether the concededly legitimate interest in certainty is rationally served by California's acquisition value system. There is no serious argument but that the uniform method of reassessing only at sale provides a direct and logical method of achieving certainty.

In essence, petitioner and her *amici* effectively concede that California's acquisition value tax is a rational means to achieve certainty and predictability,[18] but argue that the tax is nevertheless constitutionally impermissible because it achieves certainty in a manner that is not "fair." Pet. Br. 36; see also Br. *Amicus Curiae* of Amer. Planning Ass'n 17 ("[p]redictability is not the benchmark of fairness or equal treatment") (emphasis omitted). This contention is wrong as a matter of logic, history, and law. First, contrary to petitioner's suggestion, California's acquisition value tax system is not analogous to a situation in which "taxpayers whose street addresses have odd numbers [a]re taxed a fixed amount five times that of taxpayers with even-numbered addresses." Pet. Br. 36. Rather, the "certainty" achieved by the tax is rationally based on tying "value" for purposes of taxation to an

tion value tax (as compared to a current market value tax) is like a fixed rate (as compared to a variable rate) mortgage: it enables purchasers of property to know with certainty their future costs of property ownership without the risk that dramatic market increases will render even the most carefully considered purchase unaffordable at some future date.

[18] Indeed, petitioner's calculation of her own tax liability over the next 10 years (Pet. Br. 3) is possible only because of the certainty provided by California's acquisition value tax. *See also* Br. *Amici Curiae* of People's Advocate and United Org. of Taxpayers 16.

amount that the taxpayer has the ability and income to pay (*i.e.*, acquisition value of his or her property)—a point that petitioner does not address. A taxpayer reasonably can anticipate and plan for maintaining that level of income.

Second, petitioner's complaints about "fairness" boil down to this: No system of property taxation is "fair" (as a constitutional matter) unless assessments are tied to market value. *Id.* ("interest in certainty explains why the State might wish to adopt fixed valuations . . . but it does not explain why everyone's [market] value is not set as of the same year").[19] Historically, however, taxation has often been based on the value of property at the time it is acquired. Indeed, the California Supreme Court noted the analogy between an acquisition value real property tax and a sales tax. See *Amador Valley*, 583 P.2d at 1294. Both taxes are based upon "the price [the owner] was willing and able to pay for that property," *id.*—an unquestionably permissible basis for taxation. See Br. *Amicus Curiae* of Int'l Ass'n of Assessing Officers 15 (conceding that acquisition value is a rational means to ensure predictability and allows reliance on decisions and expectations at time of purchase).

Third, the question of whether an acquisition value or a market value system is more "fair" simply is not one answered by the federal courts under the Equal Protection Clause. The "fairness" of the distribution of economic burdens among nonsuspect classes of citizens is

[19] Petitioner's concession that the Constitution would permit property to be assessed at its market value at some year fixed in the past, so long as the same base year is used for all properties, Pet. Br. 36, wholly undermines her claim. Because property values appreciate at different rates in various regions of the State and County, as petitioner concedes, *id.* at 7, a tax based on market value at some fixed point in time would result in precisely the same sorts of disparities under challenge here. Petitioner's own argument thus concedes that property taxes need not be tied to current market values. *See* Br. *Amici Curiae* of Governor Pete Wilson, *et al.* 22.

precisely the type of "legislative policy determination[]" that the Constitution leaves to the citizens of the various States. *City of New Orleans* v. *Dukes*, 427 U.S. 297, 303 (1976). As long as California's choice of tax methodology "bear[s] some rational relationship to legitimate state purposes," *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 40 (1973), the Equal Protection Clause demands no more. Because the acquisition value tax provides a rational means to the State's interest in providing property owners with a more certain level of future tax liability, the acquisition value tax survives rational basis scrutiny under the Equal Protection Clause.

3. *An Acquisition Value Tax Provides A Stable Source Of Revenue For Local Governments.*

The California Court of Appeal in *R.H. Macy & Co.* v. *Contra Costa County* noted a third purpose of the acquisition value tax: it assures "a stable revenue source for local governments." 276 Cal. Rptr. 530, 535 n.2 (1990), *cert. granted*, 111 S. Ct. 2256, *cert. dismissed*, 111 S. Ct. 2923 (1991). Because an acquisition value tax is purposely divorced from the market value of the property, the tax base is less subject to the fluctuations of the real estate market. Under a current market value system, the assessed value of every property changes with the market, while under an acquisition value tax only the assessed value of those properties changing hands is affected by market conditions. Local government financing thereby is placed upon a more stable base and cushioned from periodic swings in the real estate market.[20]

This cushioning effect of an acquisition value tax is especially important given "the recent cooling off of the real estate market" in California.[21] Br. *Amicus Curiae*

[20] *See also* Br. *Amicus Curiae* of Calif. Taxpayers' Ass'n 9-10; Br. *Amici Curiae* of Howard Jarvis Taxpayers Ass'n, Paul Gann's Citizens Comm. & Pacific Legal Found. 14.

[21] This development also belies petitioner's prediction that the asserted disparities "will continue to grow worse," Pet. Br. 8, a

of Int'l Ass'n of Assessing Officers 13. Under either a market value system or California's acquisition value tax scheme, properties are reassessed if their market value falls *below* their assessed value (see *supra* p. 4 n.5). However, under the existing California system, properties that have been held during a period of real estate inflation will have market values in excess of their assessed value. Thus, with tax rates held constant, under an acquisition value system—unlike a market value system—a decline in the real estate market does not cause immediate reduction of property tax revenues, thereby bringing more certainty and stability to local government finance.

Petitioner does not dispute that this is a legitimate purpose; nor does she dispute that the acquisition value system is a reasonable means to accomplish this purpose. Instead, she simply disparages the State's motive at issue, arguing that the actual purpose of the California tax is to "impose huge tax penalties on new buyers simply to raise revenue in a politically expedient manner." Pet. Br. 39.

In the first instance, petitioner is almost certainly wrong that the burden of California's property tax falls primarily on recent buyers. Elementary economic theory recognizes that the burden of property taxes is actually shared by both the purchaser and the seller of real estate. This is so because a prospective purchaser of real estate will take into account the future tax burden and, depending on the elasticities of the market, will effectively demand a corresponding reduction in the purchase price of the property. See, *e.g.*, G. L. Bach, *Economics: An Introduction to Analysis and Policy* 509 (9th ed. 1977); DeCanio, *supra*, at 55-56. In a buyer's market, such as that which exists in California today, the incidence of the property tax falls largely, if not entirely, upon *sellers* of

prediction that she concedes depends, at the extreme, on "property continu[ing] to appreciate at the rate it has since the Proposition 13 baseline year of 1975." *Id.*

real estate—many of whom may be the very longtime owners whom petitioner presumes to be a favored class under the California tax.[22]

Even if "new buyers" of real property currently pay property taxes that are, on average, higher than average taxes paid by longtime property owners, that "distinction"—between "more recent" and "less recent" purchasers of property—certainly does not establish that an acquisition value tax is an *irrational* means to achieve the concededly legitimate state purposes. Instead, petitioner's argument suggests an approach in which this Court would inquire whether there is any conceivable wrongful purpose that can be ascribed to the State. See Pet. Br. 30-39. That approach is completely at odds with established equal protection doctrine, which instead asks whether there is any conceivable *proper* purpose which would *sustain* the legislation. See *Clements* v. *Fashing*, 457 U.S. 957, 963 (1982) (plurality opinion); *Allied Stores*, 358 U.S. at 528.

Moreover, petitioner and her *amici* suggest that this case reflects the "tyranny of the majority" (Br. of League of Women Voters 11; see Pet. Br. 14-15, 23) over a "disfavored" group of taxpayers (Pet. Br. 23), and that this Court therefore should apply something more than the rational basis scrutiny generally applicable to economic regulation. Br. *Amicus Curiae* of League of Women Voters 11 (this Court should "exercise its role" as a "supervisor of the political process") (capitalization omitted).

This argument both is factually wrong and would work a sea change in the law of equal protection. There is no

[22] It is also not obvious that petitioner's tax bill will go down if she prevails here. If the acquisition value provisions of Article XIIIA are struck down, California might revert to a current market value system. *See* Cal. Const. art. XIII. If so, petitioner's taxes will increase—even if rates are unchanged—since her property presently is assessed below its market value. *See* J.A. 20.

basis to the claim that a significant majority of residents imposed an undue burden on a politically helpless minority. It is not clear that a substantial majority of California's citizens owned homes at the time the State adopted its acquisition value tax. Under the market value system, non-homeowners faced increasing rents demanded by landlords to pay rising property taxes. Thus, these voters (like homeowners) reasonably could have seen their interests best served by an acquisition value tax. That kind of political choice bears no relationship to the concerns raised by the "discrete and insular" minority, *United States* v. *Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938), that could warrant judicial supervision of the political process. The suggestion that "more recent" purchasers of real property—who may be, but are not necessarily, "newcomers" or new residents of the State or even first-time buyers—are a suspect class is indefensible on its face. Recent buyers of property plainly are not "saddled with such disabilities or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Rodriguez*, 411 U.S. at 28.[23]

Petitioner ignores the fact that virtually all legislation benefits some group at the expense of another. See, *e.g.*, *Williamson* v. *Lee Optical, Inc.*, 348 U.S. 483 (1955) (rule benefitting ophthalmologists and optometrists at the expense of opticians). Some groups are better organized

[23] Even if "new buyers" of real property somehow did constitute a suspect class under equal protection analysis, petitioner has offered no evidence that the State intended to discriminate against them through the acquisition value tax. Assuming *arguendo* that California's acquisition value tax disproportionately burdens recent purchasers of property, and that recent purchasers are entitled to heightened protection under the Equal Protection Clause, petitioner still must produce evidence that the discriminatory impact of the tax was *intended*. *See Personnel Adm'r* v. *Feeney*, 442 U.S. 256, 273-74 (1979); *Washington* v. *Davis*, 426 U.S. 229 (1976).

or have more at stake than others; other groups command a majority simply because of the persuasiveness of their views. In any case, deference to the will of the majority is the rule—not the exception—in our constitutional form of government. It is only when the burdened group is a "discrete and insular minorit[y]," *Carolene Prods.*, 304 U.S. at 152 n.4—*i.e.*, a suspect class—that legislation is subject to heightened constitutional scrutiny. Otherwise, the political process is allowed to operate restrained only by the deferential rational basis test.[24] Under that standard, the California acquisition value tax withstands scrutiny under the Equal Protection Clause.

In sum, given the circumstances when real estate prices are in a long-range period of flux, any property tax scheme will inevitably disadvantage someone. Government is not powerless to attempt to alleviate some of the resulting inequities just because others will arise. The

[24] Petitioner also hints that heightened scrutiny may be appropriate in this case because Article XIIIA was enacted through direct voter action rather than through the legislative process, *see* Pet. Br. 48 n.37—a position embraced with startling enthusiasm by *amicus* League of Women Voters, *see* Br. *Amicus Curiae* of League of Women Voters 11-13 & n.10 (citizens, unable to grasp "'subtle, silent, or complex'" issues, may engage in "'mob rule'" when allowed self-governance; consequently, "'[t]he need for judicial review increases as direct democracy increases'") (citation omitted). This Court has never before indulged in such a patronizing view of the democratic process. There is no basis for holding that democracy is like a cigarette, *viz.*, it is more dangerous if it is not "filtered" through a representative body.

Indeed, the very cases cited by *amicus* make clear that "[i]t is [constitutionally] *irrelevant* that the voters rather than a legislative body enacted" a challenged provision of law. *Citizens Against Rent Control/Coalition for Fair Hous.* v. *City of Berkeley*, 454 U.S. 290, 295 (1981) (emphasis added); *see also Lucas* v. *Forty-Fourth Gen. Assembly*, 377 U.S. 713, 737 (1964) ("We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is *without federal constitutional significance* . . . .") (emphasis added). Moreover, for reasons discussed *infra* at pp. 41-47, the California tax in no way burdens the right of interstate travel.

inequity that the acquisition value tax addressed—people being taxed out of their homes or into poverty by circumstances over which they had no control—is at least as serious as the imbalance measured by market value about which petitioner complains. But these are matters which must be left to the political process. California already has made some adjustments to Article XIIIA, as originally enacted,[25] and there is no reason to believe that the State and its citizens are not fully capable of developing and implementing their own rational tax policy.[26] Certainly, there is reason to doubt whether federal courts, which lack any representative qualities, will perform those functions "better" or even as well.

II. CALIFORNIA'S ACQUISITION VALUE TAX IS FULLY CONSISTENT WITH THIS COURT'S DECISION IN *ALLEGHENY PITTSBURGH*.

In light of the difficulty in asserting that the California acquisition value tax does not meet the extremely deferential standards of rational basis scrutiny (see *supra* pp. 13-29), petitioner not surprisingly devotes nearly half of her argument to the claim that the decision in *Allegheny Pittsburgh Coal Co.* v. *County Commission*, 488 U.S. 336 (1989), is controlling in this case. Pet. Br. 14-30.[27] In

[25] For example, Article XIIIA has been amended to allow assessments to "be reduced to reflect substantial damage, destruction or other factors causing a decline in value." Cal. Const. art. XIIIA, § 2(b).

[26] Particularly telling in this respect is the argument by *amicus* International Association of Assessing Officers that California's acquisition value tax is unconstitutional because California's "coefficient[] of dispersion," which it offers as a measure of the deviation of assessments from market value, ranks it thirty-third among all States. *See* Br. *Amicus Curiae* of the Int'l Ass'n of Assessing Officers 12. Presumably, if this "coefficient of dispersion" is the constitutional linchpin, then the taxing schemes of 17 other States are also constitutionally suspect.

[27] The *Allegheny Pittsburgh* decision was the first time since 1931 that this Court had concluded that the application of a state

that case, this Court held that when a State is operating under a current market value system, a local assessor cannot assess certain properties at their most recent purchase price without adjusting the assessments of other properties seasonably to reflect the overall increase in real estate prices. 488 U.S. at 345-46. Nothing in *Allegheny Pittsburgh* suggests, however, that a State may not, consistent with the Equal Protection Clause, adopt an acquisition value system of property taxation and enforce it consistently, as California has done here.

The flaw in petitioner's reliance upon *Allegheny Pittsburgh* is her failure to give credence to the legitimate purposes underlying California's acquisition value tax. California has adopted as a matter of policy an acquisition value property tax. By contrast, West Virginia's property tax was based exclusively on market value. The difference in the policies underlying the California and West Virginia tax schemes is critical. California's acquisition value assessment practices clearly further the State's policies embodied in Article XIIIA of the state constitution. The tactics of the local assessor in *Allegheny Pittsburgh*, by contrast, did not and could not achieve any legitimate purpose underlying West Virginia's market value taxing scheme. Petitioner's heavy reliance on *Allegheny Pittsburgh*, therefore, underscores the fact that, in petitioner's view, a market-value property tax system is the only one the Constitution permits.

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property tax failed to satisfy the Equal Protection Clause. *See* Cohen, *State Law in Equality Clothing: A Comment on* Allegheny Pittsburgh Coal Company v. County Commission, 38 UCLA L. Rev. 87, 91 n.25 (1990). The 1931 case was *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments*, 284 U.S. 23 (1931), which, like *Allegheny Pittsburgh*, involved discriminatory assessments of coal-bearing property in a State which required assessment on the basis of current market value.

A. The Holding In *Allegheny Pittsburgh* Does Not Dispose Of This Case.

At issue in *Allegheny Pittsburgh* was the operation of the West Virginia property tax system, which, according to the West Virginia Constitution, required that all property "shall be taxed in proportion to its value," meaning current market value. W. Va. Const. art. X, § 1; see 488 U.S. at 338. The tax assessor in Webster County, West Virginia, "apparently on her own initiative," assessed property in the county at 50% of appraised value and fixed appraised value at the most recent purchase price of the property, with occasional adjustments. *Id.* at 338, 345. The adjustments were insufficient to prevent considerable disparities in assessments from developing over time. Property that had not been sold recently was assessed at a value well below that of comparable property that had been the subject of a recent sale. *Id.* at 341.

This Court held that the Webster County assessment practices violated the Equal Protection Clause. The disparities in assessments of comparable property were not the result of occasional errors or mistakes in judgment by the assessor; instead, they were the result of "intentional systematic undervaluation by state officials." 488 U.S. at 345-46 (quoting *Sunday Lake Iron Ore Co.* v. *Township of Wakefield*, 247 U.S. 350, 352-53 (1918)). Although the Court recognized that the States have broad powers to classify properties, 488 U.S. at 344, the State of West Virginia did not purport to adopt different classifications for the properties subject to differing assessments. *Id.* at 345 ("West Virginia has not drawn such a distinction"). Instead, the State's purpose was to tax all properties at their curent market value. Its "Constitution and laws provide[d] that all property of the kind [in question] be taxed ... according to its estimated market value," and this Court found "no suggestion" that the "State may have adopted a different system in practice from that specified by statute." *Id.*

Webster County sought to justify its assessment practices on the ground that they were "rationally related to its purpose of assessing properties at true current value." *Id.* at 343. This Court rejected that justification. In theory, "[t]he use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command." *Id.* But, as employed by Webster County, the assessment practices violated the Equal Protection Clause because they were not a rational means to the State's concededly legitimate end: they failed to ensure "the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Id.* Given this impermissible disparity in assessment, the Court concluded that petitioners could "not be remitted by the State to the remedy of seeking to have the assessments of the undervalued property raised," as the West Virginia Supreme Court had done. *Id.* at 346. In so holding, the Court in *Allegheny Pittsburgh* made clear that it did not intend to alter long-standing equal protection principles, which recognize that any state tax classification should be upheld so long as it "rests upon some reasonable consideration of difference or policy." *Id.* at 344 (quoting *Brown-Forman Co.* v. *Kentucky,* 217 U.S. 563, 573 (1910)).

In footnote four to its opinion, the Court expressly rebuffed any suggestion that its decision in *Allegheny Pittsburgh* would invalidate California's acquisition value tax:

> We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIIIA of its Constitution, popularly known as "Proposition 13." Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIIIA, § 2 (limiting inflation adjustments to 2% per year). The system is *grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains* in the value of the property.

488 U.S. at 344 n.4 (emphasis added). As this Court anticipated in footnote four, *Allegheny Pittsburgh* is not dispositive because that case involved an "aberrational enforcement policy" applied in a current market value system—as opposed to California's acquisition value system which is "grounded on the belief that taxes should be based on the original cost of property" in order to further significant state interests that were being impaired under the pre-existing taxing scheme. *Id. Allegheny Pittsburgh* is thus fully consistent with the constitutionality of California's acquisition value tax.

B. *Allegheny Pittsburgh* Does Not Require That Taxes Be Based On The Current Market Value Of Property.

Petitioner argues that the California acquisition value tax is unconstitutional under *Allegheny Pittsburgh* because it "fail[s] to meet the federal constitutional requirement—the 'seasonable attainment of a rough equality in tax treatment of similarly situated property owners.'" Pet. Br. 17 (quoting 488 U.S. at 342-43). This argument overlooks the fact that Webster County violated the Equal Protection Clause in its failure to achieve "rough equality" in market value assessments only because the *purpose* of the West Virginia tax law was to assess properties equally at their current market value. Under its acquisition value system, California's tax does achieve equality in tax treatment of similarly situated taxpayers: all property is taxed at acquisition value and all taxpayers whose property has the same acquisition value are taxed identically.[28] The dispositive difference is that California, un-

[28] Petitioner asserts that the court of appeal upheld the California tax on the ground that it "legislatively creates a unique

like West Virginia, has elected not to continue to base its property tax on market value.

1. The "disparities" that petitioner identifies (Pet. Br. 2-7) exist *only* by assuming that current market value must be the sole basis of measuring assessed value. If acquisition value is accepted as a rational and legitimate basis for assessment, as it should be (see *supra* pp. 13-29), then the so-called disparities simply evaporate. In fact, if acquisition value is accepted as a rational basis for comparison, then a tax on current market value will result in widespread disparities among taxpayers with similar acquisition values.[29]

Petitioner's argument for "rough equality" in market value, if accepted by this Court, would preclude the States from taxing property on any basis other than current market value. However, nothing in the Equal Protection Clause supports such a limitation on the States' sovereign authority to tax. To the contrary, this Court has made clear that the "inflexible restrictions upon the taxing pow-

acquisition value 'class' for each taxpayer to pay taxes based on 'each owner's assessment,' thus permitting the gross disparities found impermissible in *Allegheny*." Pet. Br. 23. To the contrary, the court of appeal's analysis is identical to that stated here—that "California does not discriminate against similarly situated property owners because each owner's assessment is based on acquisition cost." Pet. App. A22. But, regardless, if the California tax is seen as classifying property on the basis of acquisition value, rather than treating all property owners as in the same class, the constitutional analysis is essentially unchanged. Such a classification scheme "reflect[s] pre-existing differences" in the acquisition value of the property, *Williams* v. *Vermont*, 472 U.S. 14, 27 (1985), and is rationally related to the same three legitimate state ends.

[29] Of course, respondents do not mean to suggest that acquisition value taxation is constitutionally required, merely that it is one of many methods of taxation that are within the realm of rational state choice permitted by the Equal Protection Clause.

ers of the state [contained in state constitutions[30]] were not to be insinuated into that meritorious conception of equality which alone the Equal Protection Clause was designed to assure." *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U.S. 362, 368 (1940).

2. Moreover, this Court consistently has upheld against equal protection challenges state taxes that were not based on the current market value of property. In *Bell's Gap R.R.* v. *Pennsylvania*, 134 U.S. 232 (1890), this Court upheld an annual Pennsylvania tax on the par value, rather than the market value, of bonds. The tax was assessed against bondholders at the rate of three mills per dollar of the par value of the bond. The petitioner challenged the tax as invalid because "the nominal value of the bonds is not their real value" and so the tax was not based on the current market value of the bond. *Id.* at 235. This Court held that regardless of whether the par value of the bond was its current value, the Equal Protection Clause did not bar the Pennsylvania tax. This Court reasoned that "the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation." *Id.* at 237. If the Equal Protection Clause were so construed, "it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require." *Id.*

Similarly, in *Ohio Oil Co.* v. *Conway*, 281 U.S. 146 (1930), this Court upheld a Louisiana severance tax on the quantity of oil produced. The Louisiana Constitution

[30] For example, the West Virginia Constitution provides that "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value," Art. X, § 1, which, as this Court stated in *Allegheny Pittsburgh*, requires comparable property to "be taxed at a rate uniform throughout the State according to its estimated market value." 488 U.S. at 345.

authorized severance taxes on "'either the quantity or value of the product at the time and place where it is severed,'" and the Louisiana legislature enacted a tax on oil at a variable rate per barrel produced based on the "gravity" of the oil produced. *Id.* at 150-51 (quoting La. Const. art. X, § 21). The petitioner's complaint alleged that the tax resulted in differing effective tax rates ranging from three percent of value to seven and one-half percent of value. This Court recognized that the tax was "a tax according to quantity" and "not strictly *ad valorem.*" *Id.* at 158. It nevertheless upheld the tax under the Equal Protection Clause, stating that a "State is not limited to *ad valorem* taxation," *id.* at 159, and rejecting as "wholly inadmissible" any contention "that the State could tax only on a strictly *ad valorem* basis," *id.* at 161.

Allegheny Pittsburgh is perfectly consistent with these cases. The Court was careful to note that there was "no suggestion" in the record that West Virginia's tax system was based on anything other than current market value assessments. 488 U.S. at 345. Thus, *Allegheny Pittsburgh* simply held that when a State is assessing property under a current market value system, a local assessor cannot assess property at its most recent purchase price without making general adjustments to the assessments of other properties that "are accurate enough over a short period of time to equalize the differences in proportion between the assessments." *Id.* at 343. Nothing in *Allegheny Pittsburgh*, or in any of this Court's prior decisions, indicates that a State may not choose a method of taxation other than a tax on current market value.

C. *Allegheny Pittsburgh* Does Not Hold That An Acquisition Value Tax Is Irrational.

Petitioner argues that this Court in *Allegheny Pittsburgh* held that a tax assessed on the acquisition value of property lacks any "reasonable consideration of difference or policy." Pet. Br. 31 (quoting *Allegheny Pittsburgh*, 488 U.S. at 344). Petitioner contends that because the

operation of the California tax is indistinguishable from the Webster County assessment practices in *Allegheny Pittsburgh*, *id.* at 18-19, it must be struck down.

The premise of this argument is fundamentally flawed. This Court in *Allegheny Pittsburgh* did not hold that an acquisition value tax lacks any rational basis. The question before the Court in *Allegheny Pittsburgh* was whether the Webster County assessment practices at issue could be justified as "rationally related to [the State's] purpose of assessing properties at true current value." 488 U.S. at 343. The Court did not address the legitimate state interests that would support an acquisition value tax, much less determine that such interests were irrational. Petitioner's statement to the contrary (Pet. Br. 30) is flatly incorrect.[31]

Petitioner argues that, even if this Court did not *hold* that acquisition value systems are irrational, there is no "distinction [of] constitutional relevance" between the "law of the state generally applied" (California) and an "aberrational enforcement policy" (Webster County) as long as both systems are "functionally identical." Pet. Br. 24. However, the relevant "distinction" suggested by footnote four in *Allegheny Pittsburgh* is not a question of "legislative classification" as opposed to "administrative classification," as petitioner suggests. Pet. Br. 26-29.

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[31] The fact that arguments in favor of an acquisition value tax system might have been raised in the briefs before this Court in *Allegheny Pittsburgh*, *see* Pet. Br. 30, 32 n.19, 36 n.24, is simply irrelevant. This Court did not address those justifications because Webster County conceded that the State of West Virginia was operating a current market value system. The only justification that Webster County could offer for its assessment practices—that they were "rationally related to its purpose of assessing properties at true current value"—was simply, and correctly, rejected by the Court. 488 U.S. at 343. Nothing in *Allegheny Pittsburgh* suggests that the different justifications for an acquisition value tax are not legitimate, and, in fact, they plainly are. *See supra* pp. 17-29.

Instead, the fact that the acquisition value tax is the law of the State of California is significant because respondents—unlike Webster County—are not limited to justifying the State's assessment practices with reference to West Virginia's objective of taxing property based on current market value.[32] 488 U.S. at 343; see *supra* p. 30.

In sum, petitioner's repeated assertion that California's system of property assessment is indistinguishable *in operation* from the Webster County assessment scheme struck down in *Allegheny Pittsburgh* completely misses the point. The crucial fact that distinguishes *Allegheny Pittsburgh* from this case is that West Virginia—unlike California—had not adopted an acquisition value method of taxation. West Virginia required property to be taxed at its current market value, and Webster County had not

[32] Petitioner and her *amici* argue that upholding California's acquisition value tax in the face of *Allegheny Pittsburgh* "would radically transform the relations between federal courts and state law." Pet. Br. 27; Br. *Amicus Curiae* of Building Indus. Ass'n of Southern California 14-18. Their fears are baseless. This Court's recognition that California's adoption of an acquisition value tax is distinguishable from "the aberrational enforcement policy" in *Allegheny Pittsburgh* would not "impermissibly and unnecessarily interject courts into decisions about whether [state] actions comport with state law or policy." Pet. Br. 29. Rather, such a distinction merely reflects the fact that equal protection analysis requires some inquiry into state law—at least to the extent necessary to decide whether there are legitimate state purposes that would sustain the State's action. *See Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973).

In *Allegheny Pittsburgh,* this Court noted that the Webster County assessment practices did not rise to the level of state policy and so had to be justified by reference to the State's choice of a current market value system. 488 U.S. at 345. Compliance with state law, however, was not a dispositive consideration; indeed, the Court accepted the West Virginia Supreme Court's determination that the assessment practices did not violate state law. *Id.* at 346. Thus, it is neither impossible nor extraordinary for the federal courts to undertake the necessary inquiry into legitimate state purposes without "transform[ing] every intentional violation of state law into a constitutional claim." Pet. Br. 28.

"adopted a different system in practice from that specified by statute"—a system that "*may be valid* so long as the implicit policy is applied evenhandedly." *Id.* at 345 (emphasis added). Instead, the Webster County assessment practices were an "aberrational enforcement policy," *id.* at 344 n.4, that could be justified only by reference to the state policy of market value taxation. Because the actual assessment practices were *not* rationally related to the policy of assessing properties at current market value, the Court held that they violated the Equal Protection Clause. *Id.* at 345-46.

Unlike Webster County, which was required to justify its assessment practices by reference to the State's choice of a current market value taxing method, California's acquisition value tax was adopted as an amendment to the California Constitution for the specific purpose of overriding the pre-existing requirement that property be taxed at current market value. Because California's acquisition value tax system is a rational means to further the legitimate state interests that led to its adoption, see *supra* pp. 17-29, that system readily withstands analysis under the Equal Protection Clause.

III. CALIFORNIA'S TAX ON THE ACQUISITION VALUE OF PROPERTY DOES NOT VIOLATE PETITIONER'S RIGHT TO TRAVEL.

Petitioner argues at length that the California tax should be subjected to heightened judicial scrutiny because it infringes the constitutional right to travel. Petitioner's arguments in this respect, however, are neither properly before the Court nor consistent with the Court's precedents.

A. Petitioner Lacks Standing To Raise The Right-To-Travel Claim.

One of the few relative certainties in an otherwise "uncertain jurisprudence," *Zobel* v. *Williams*, 457 U.S. 55,

73 (1982) (O'Connor, J., concurring in the judgment), is that the right to travel found in the Constitution is limited to *interstate* travel. Although the origin or scope of the right to travel has sometimes been the subject of disagreement, the Court consistently has recognized that the Constitution's concern is with the migration of persons *across state lines*.[33]

Although petitioner argues that California's acquisition value tax penalizes interstate travel, petitioner does *not* claim that she is among those "newcomers" to California whose migratory rights have allegedly been burdened. To the contrary, the record reflects only that petitioner purchased her property in 1988 "after living in rental property for 25 years and saving her money." Pet. App. A4. Petitioner is thus asserting a hypothetical constitutional injury that she has not suffered and, in fact, has no interest in raising.

Petitioner's right-to-travel claim plainly contravenes the rule that "one may not claim standing in this Court to vindicate the constitutional rights of some third party." *Barrows* v. *Jackson*, 346 U.S. 249, 255 (1953); see also *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 166 (1972) (a plaintiff "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others"). Although the rule is a prudential one and may be overcome "[w]here practical obstacles prevent a [third] party from asserting rights on behalf of itself," *Secretary of State* v. *Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984),[34] it is clear in this case that persons who recently migrated to California or who have concrete plans to do so are perfectly capable of asserting their own constitutional rights. Because petitioner's own interests in interstate travel are wholly unaffected by the California acquisition value tax and because those who *have* migrated recently to California are capable of asserting their own constitutional rights, petitioner lacks standing to bring her right-to-travel challenge.

[33] *See, e.g., Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 902 (1986) (plurality opinion) (defining "the constitutional right to travel" as, "more precisely, the right of free interstate migration"); *id.* at 920 (O'Connor, J., dissenting) (defining right to travel as "the fundamental right to settle in another State"); *Zobel* v. *Williams*, 457 U.S. 55, 60 n.6 (1982) (identifying "[t]he right to travel and to move from one state to another"); *id.* at 66 & n.1 (Brennan, J., concurring) (recognizing that the Constitution's protection of travel springs from "the *national* interest in a fluid system of interstate movement") (emphasis in original); *Shapiro* v. *Thompson*, 394 U.S. 618, 630 (1969) ("this right to travel interstate").

B. California's Acquisition Value Tax, Which Draws No Distinctions Based On Residency And Which Treats All California Property Owners Alike, Does Not Infringe The Right To Travel.

Even if this Court were to reach the right-to-travel argument, it is plain that any incidental burden on interstate migration that might be created by California's acquisition value tax falls far short of what is necessary to trigger heightened constitutional scrutiny.[35]

"A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses 'any classification

[34] For example, in *Barrows* the Court "reaffirm[ed]" its allegiance to the "rule denying standing to raise another's rights," but went on to hold that the rule should yield in the "unique situation" there presented because "it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court." 346 U.S. at 257.

[35] Because "'the constitutional right to travel from one State to another'" is a fundamental right, *Shapiro*, 394 U.S. at 630 (quoting *United States* v. *Guest*, 383 U.S. 745, 757 (1966)), state classifications that erect a meaningful barrier to interstate migration must survive heightened scrutiny under the Equal Protection Clause, *id.* at 634.

which serves to penalize the exercise of that right.'" *Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 903 (1986) (plurality opinion) (citations omitted). Because petitioner has offered no basis upon which a court could infer that California's acquisition value tax was intended to deter migration or actually has deterred migration, the determinative question is whether California's tax on the acquisition value of property "operates to penalize those persons . . . who have exercised their constitutional right of interstate migration." *Id.* at 905 (internal quotation marks omitted). In answering that question, it is not sufficient for petitioner to show that California's tax has merely "a negligible or minimal impact on the right to travel." *Id.* at 921 (O'Connor, J., dissenting).[36] In fact, however, California's acquisition value tax poses no threat to free interstate migration and therefore, under the cases in which this Court has found an impermissible burden on the right to travel, the tax is not unconstitutional.

In recent years, this Court has found the right to travel implicated in two broad categories of cases. First, the Court has struck down laws that "deny[] newcomers 'basic necessities of life'" or citizenship. *Memorial Hosp.* v. *Maricopa County*, 415 U.S. 250, 269 (1974). Thus, the Court has held that durational residency requirements that withhold from migrants, even temporarily, basic welfare benefits, see *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), state-sponsored health care, see *Memorial Hosp.*, 415 U.S. 250, or the right to vote, see *Dunn* v. *Blumstein*, 405 U.S. 330 (1972), erect real barriers to interstate travel which must withstand strict scrutiny.

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[36] *See also Memorial Hosp.* v. *Maricopa County*, 415 U.S. 250, 285 (1974) (Rehnquist, J., dissenting) ("the Court should examine, as it has done in the past, whether the challenged [state action] erects a real and purposeful barrier to movement, or the threat of such a barrier, or whether the effects on travel, viewed realistically, are merely incidental and remote").

Second, the Court has struck down "state laws that create[] permanent distinctions among residents based on the length or timing of their residence." *Soto-Lopez*, 476 U.S. at 907 (plurality opinion). In *Zobel* v. *Williams*, 457 U.S. 55 (1982), for example, the Court held unconstitutional an Alaska law that authorized cash payments to Alaska residents in varying amounts depending upon the number of years they had been residents of the State. Similarly, in *Hooper* v. *Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Soto-Lopez* the Court struck down laws that granted benefits to certain veterans residing in the State depending upon whether they had established residency at some fixed point in the past. In all three cases, the Court found that the laws offended the Constitution because they "create[d] 'fixed, permanent distinctions between . . . classes of concededly bona fide residents' based on when they arrived in the State." *Hooper*, 472 U.S. at 617 (quoting *Zobel*, 457 U.S. at 59); see also *Soto-Lopez*, 476 U.S. at 908-09 (plurality opinion).[37]

By denying significant benefits to certain state residents based solely upon their later arrival, the laws imposed a brand of "second-class citizens[hip]" on more recent migrants—a status from which they could never escape. See *Hooper*, 472 U.S. at 623; see also *id.* at 623 n.1 (the Equal Protection Clause does not countenance "'degrees of citizenship based on length of residence'") (quoting *Zobel*, 457 U.S. at 69 (Brennan, J., concurring)). As Justice O'Connor explained in *Zobel*:

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[37] In none of these cases did the Court hold that the state laws violated the right to travel; rather, in *Zobel* and *Hooper* the laws were struck down as failing even the rational basis test, and in *Soto-Lopez* only a plurality found the right to travel burdened. Most members of the Court have agreed, however, that the Court's holdings in each case were driven in part by the conclusion that the right to travel was implicated by the States' explicit differentiation between newer and older residents. *See, e.g., Soto-Lopez*, 476 U.S. at 907-08 (plurality opinion of Brennan, J.); *id.* at 919-20 (O'Connor, J., dissenting); *see also Zobel* v. *Williams*, 457 U.S. 55, 72-73 (1982) (O'Connor, J., concurring in the judgment).

> [Through its law, the State] forces nonresidents settling in the State to accept a status inferior to that of oldtimers. . . . In effect, . . . the State told its citizens: "Your status depends upon the date on which you established residence here. Those of you who migrated to the State cannot share its bounty on the same basis as those who were here before you."

Zobel, 457 U.S. at 74-75 (O'Connor, J., concurring in the judgment). The most striking characteristic of all of the laws struck down in both categories of cases, from *Shapiro* through *Soto-Lopez*, is that they drew *express* " 'state distinctions between newcomers and longer term residents' " turning solely on length or timing of residency. *Hooper*, 472 U.S. at 618 n.6 (quoting *Zobel*, 457 U.S. at 60 n.6). The Constitution, founded in part upon a "national interest in a fluid system of free interstate movement," *Zobel*, 457 U.S. at 66 n.1 (Brennan, J., concurring) (emphasis omitted), simply will not tolerate the creation of two tiers of residents or citizens.

California's tax on the acquisition value of property bears none of the earmarks of those state laws that have been held to offend the right to travel. California's tax does *not* differentiate between recent migrants and longtime residents. Indeed, petitioner concedes as much, but argues that "[l]ength of home[]ownership is a sufficiently close proxy to length of residency." Pet. Br. 44. This assertion is supported by nothing in the record and is counterintuitive. Purchasers of California real estate are taxed upon the price they pay for their property, regardless of whether they have recently moved to the State or have lived there all their lives. The benefits of longtime ownership are available to nonresidents as well as residents, and the tax burden associated with later purchase in an inflationary market falls evenly upon

the purchaser from out of state and the purchaser from across town.[38]

Even if there were some statistical relationship between higher property taxes and length of residency, Article XIIIA imposes the sort of general, nondiscriminatory burden that this Court suggested in *Dunn* v. *Blumstein*, 405 U.S. 330 (1972), would not infringe the constitutional right to travel. There, the Court emphasized that explicit "[d]urational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on *only* those persons who have recently exercised that right." 405 U.S. at 342 (emphasis added). The Court contrasted the situation where,

> for example, an interstate migrant loses his driver's license because the new State has a higher age requirement . . . . [I]n such a case, the new State's age requirement is not a *penalty* imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive.

Id. at 342 n.12 (emphasis in original).

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[38] This Court has never found that a non-residency-based "criterion chosen by a state for classifying taxpayers is a close enough proxy for out-of-state residency to be subject to the same constitutional doctrines that involve residency." Pet. Br. 45. The Court's rulings in *Memorial Hospital* and *United Building & Construction Trades Council* v. *Mayor of Camden*, 465 U.S. 208 (1984) (involving the Privileges and Immunities Clause of Art. IV), relied upon by petitioner for this contention, struck down explicit local residency requirements that excluded or penalized out-of-state residents or migrants. The fact that the local residency requirements in those cases also penalized some in-state residents living outside the locality could not save them from invalidation, given that the laws had the effect of excluding absolutely those living outside the State *based solely on their status as nonresidents*. *See, e.g., United Bldg. & Constr. Trades*, 465 U.S. at 216-17 ("A person who is not residing in a given State is *ipso facto* not residing in a city within the State. Thus, whether the exercise of a privilege is conditioned on State residency or on municipal residency he will just as surely be excluded").

In this case, as in the driver's license hypothetical in *Dunn*, the residency status of the taxpayer—past or present, long-term or short-term—is utterly irrelevant in the calculation of the burden. If petitioner's property taxes are higher than those of her neighbors, that is not because of the date upon which she became a California resident, but because she paid more for her house. Indeed, a migrant who established residency in California and bought a home there six months ago may well enjoy a somewhat *lower* property tax bill than his or her neighbor who, although a life-long Californian, moved to the neighborhood and purchased a comparable home last week.

Finally, contrary to petitioner's assertion, the relative tax burdens of California homeowners are not "fixed" or "permanent" as were the classifications at issue in *Zobel*, *Hooper*, and *Soto-Lopez*. Rather, the relative burdens will be continually adjusted and reassigned with the regular turnover of the real estate market. Under these circumstances, there is clearly no danger that California's tax on the acquisition value of property will carry with it an expression to new residents that they have "a less valuable citizenship right" than pre-established residents, *Zobel*, 457 U.S. at 75 (O'Connor, J., concurring in the judgment), nor will it even remotely "identify[]" recent migrants "as in a sense 'second-class citizens,'" *Hooper*, 472 U.S. at 623.

Because the California acquisition value tax draws no "distinctions among residents based on the length or timing of their residence," *Soto-Lopez*, 476 U.S. at 907 (plurality opinion), and imposes no brand of inferior status upon recent migrants, it does not "operate[] to penalize those persons . . . who have exercised their constitutional right of interstate migration." *Id.* at 905 (internal quotation marks omitted). Accordingly, the California tax does not warrant the invocation of heightened constitutional

scrutiny and must be upheld as rationally related to its legitimate governmental objectives.[39]

* * * * *

Respondents acknowledge that, in an inflationary real estate market, owners of properties with identical market values can have significantly different tax bills under an acquisition value tax scheme. It is equally true in an inflationary real estate market where there is *no* acquisition value tax scheme that homeowners, through no fault of their own, can find themselves without the financial resources to maintain their homes or other necessities of life. As this Court stated in *San Antonio Independent School District* v. *Rodriguez*, "[n]o scheme of taxation, whether the tax is imposed on property, income, or purchasers of goods and services, has yet been devised, which is free of all discriminatory impact." 411 U.S. at 40. The real question, therefore, is whether the balancing of the

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[39] It is equally obvious that Article XIIIA does not infringe the right to travel if that right is conceived of as emanating from the Privileges and Immunities Clause of Article IV. *See, e.g., Zobel*, 457 U.S. at 73-74 (O'Connor, J., concurring in the judgment). Article IV, § 2, provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. The Clause requires that "'with respect to those 'privileges' and 'immunities' bearing on the vitality of the Nation as a single entity,' . . . a State must accord residents and nonresidents equal treatment." *Supreme Court* v. *Piper*, 470 U.S. 274, 279 (1985) (quoting *Baldwin* v. *Fish & Game Comm'n*, 436 U.S. 371, 383 (1978)). In short, the Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer* v. *Witsell*, 334 U.S. 385, 395 (1948); *see also Zobel*, 457 U.S. at 74 (O'Connor, J., concurring in the judgment). From this, it is apparent that California's acquisition value tax does not offend any right to travel rooted in the Privileges and Immunities Clause. Although the right to acquire real property is undoubtedly one of the "privileges" of citizenship protected by the Clause, *see Piper*, 470 U.S. at 281 n.10, it is equally clear that California does not differentiate between residents and nonresidents in its taxation of property.

appropriate benefits and burdens of competing tax schemes should be constitutionalized or is properly left to each individual State to adjust according to its own needs. In *Rodriguez*, this Court recognized the wisdom of applying the rational basis test "[i]n such a complex area in which no perfect alternatives exist." *Id.* Under that well-established standard, a State's methods of taxation need only be rationally related to a legitimate state purpose, and it is plain beyond doubt that California's acquisition value tax passes constitutional scrutiny under that standard.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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